

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CURTIS NIMMONS,

Plaintiff,

v.

ORDER
11-CV-817-A

BRIAN FISCHER, Commissioner and
K. FLANAGAN, Superintendent,

Defendants.

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On July 30, 2013, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion to dismiss for failure to state a claim be granted and the complaint dismissed without prejudice to filing, within 60 days, an amended complaint consistent with the Report and Recommendation.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendants' motion to dismiss for failure to state a claim is granted and the complaint is dismissed without prejudice to filing, within 60 days, an amended complaint consistent with the Report and Recommendation.

The Clerk of Court shall terminate the action, subject to plaintiff having the right to reopen, for a period of 60 days, by filing an amended complaint.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: August 20, 2013